

EXHIBIT 13

Picard v. Merkin

Michael Autera, Jr. 10-22-14

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT SECURITIES LLC,
Debtor.

Adv. Pro. No.

08-01789 (BRL)

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff, Adv. Pro. No.

09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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Videotaped Deposition of MICHAEL E. AUTERA,
JR., as reported by Nancy C. Bendish, CCR, RMR,
CRR, Realtime Systems Administrator and Notary
Public of the States of New York and New Jersey,
at the offices of BAKER HOSTETLER, 45 Rockefeller
Plaza, New York, New York on Wednesday, October
22, 2014, commencing at 9:45 a.m.

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1 Q. Why was GCC incurring expenses on
2 behalf of Ascot Partners?

3 A. Again, it would be direct expenses
4 that related to Ascot Partners, an auditing bill,
5 there could be expenses.

6 Q. Did GCC have -- what was GCC's
7 relationship to Ascot Partners?

8 A. GCC had no formal legal connection
9 with Ascot Partners, other than that Ezra Merkin,
10 as the individual general partner of Ascot
11 Partners, was also the sole owner and shareholder
12 of Gabriel Capital Corp.

13 Q. Was GCC fulfilling the back office
14 support functions for Ascot Partners?

15 A. Personnel at GCC was performing
16 services for Ascot Partners, accounting and things
17 like that, yes.

18 Q. And the same is true with Gabriel;
19 GCC was fulfilling that same function with Gabriel
20 Capital?

21 A. Yes.

22 Q. When Ascot Partners sent payments
23 to GCC, how were those payments made?

24 A. Again, they'd be -- generally they
25 would be wire transfers between Ascot Partners'

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1 Morgan Stanley account.

2 Q. Did Ascot Fund ever send management
3 fees directly to Mr. Merkin?

4 A. I don't think so.

5 Q. And who at Ascot Fund authorized
6 those payments?

7 A. Again, it would have been either
8 myself or Ezra Merkin.

9 Q. And between the years '93 and 2002,
10 did Ascot Fund send any other types of payments to
11 GCC?

12 A. Similar to what I said before for
13 the other three funds, Ascot Fund would have --
14 could have reimbursed Gabriel Capital Corp. for
15 any expenses that GCC paid on its behalf.

16 Q. And what about from the years 2003
17 to 2008; did Ascot Fund send any payments to GCC?

18 A. It, again, could have reimbursed
19 GCC for direct expenses that GCC incurred on its
20 behalf.

21 Q. What function was GCC fulfilling to
22 Ascot Fund between the years 2003 and 2008?

23 A. Same function, it was its
24 investment advisor.

25 Q. So between 2003 --

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1 A. Well, Ascot -- in 2002 Ascot Fund
2 became a feeder into the -- into Ascot Partners,
3 LP. So the roles of investment advisor, at that
4 point, ended for Ascot Fund and GCC.

5 Q. Did GCC provide any back office
6 support to Ascot Fund after the master feeder
7 structure was put in place?

8 A. Yes.

9 Q. What types of support did it
10 provide?

11 A. There was accounting records
12 performed, interactions with Ascot Fund's
13 directors in the Cayman Islands dealing with the
14 auditors, things like that.

15 Q. Did the amount of support that GCC
16 provided to Ascot Fund after 2003 change -- I'm
17 sorry. Did the amount of support that GCC
18 provided Ascot Fund as a result of the change in
19 the master feeder structure differ in any way from
20 the amount of support it provided between 1993 and
21 2002?

22 MS. ROSSAN: Objection to form.

23 A. Well, Ascot Fund Limited was no
24 longer maintaining its own brokerage accounts at
25 that point, so there was less accounting and

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1 reconciliation work associated with that. Other
2 than the back office, the rest of the back office
3 work continued, the type of functions that I
4 described just before.

5 Q. For Ascot Partners, the
6 transactions between Ascot Partners and GCC, where
7 would those transactions be recorded?

8 A. They'd be recorded in the
9 accounting system for both Ascot Partners and GCC.

10 Q. Same question for Ascot Fund. The
11 transactions from Ascot Fund to GCC, where would
12 those be recorded?

13 A. Same answer, Ascot Fund's
14 accounting records and GCC's accounting records.

15 (Exhibit Trustee 263 marked for
16 identification.)

17 Q. Mr. Autera, the court reporter has
18 handed you what's been marked as Trustee Exhibit
19 263. It is Bates number GCC-P 0646935 through
20 938. Do you recognize this document?

21 A. This is a copy of a bank statement
22 for Gabriel Capital Corp.'s account at JPMorgan.

23 Q. And is this the JPMorgan account
24 that you were referring to earlier for GCC?

25 A. I believe so.

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1 transfers?

2 A. Not that I'm aware of.

3 (Exhibit Trustee 270 marked for
4 identification.)

5 Q. Mr. Autera, the court reporter has
6 handed you what's been marked as Trustee's Exhibit
7 270. It's Bates number is MSMERKIN-00006467
8 through 6475.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. This a copy of a brokerage
12 statement for an Ascot Partners, LP account
13 maintained at Morgan Stanley.

14 Q. Did Ascot Partners have more than
15 one brokers account at Morgan Stanley?

16 A. Yes.

17 Q. Is account █ the primary
18 account for Ascot Partners?

19 A. I'm not sure. It's one of the
20 primary accounts.

21 Q. Okay. Do you know if Ascot
22 Partners received transfers from BLMIS into its
23 Morgan Stanley accounts?

24 A. Yes, it did.

25 Q. Do you know if it's account █?

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1 A. I just -- I can't recall if it was
2 necessarily this account.

3 Q. Did Ascot Partners send payments
4 out of this account?

5 A. It did send payments out of this
6 account.

7 Q. And who were those payments made
8 to?

9 A. Would be the same. It would be
10 redemptions to limited partners. Could be
11 expenses that were paid, could be payment of fees.

12 Q. And did Ascot Partners send its
13 investment -- its management fee expense to GCC
14 from this account?

15 MS. ARCHER: Objection to form.

16 A. I'm not sure.

17 Q. Did Ascot Partners receive funds
18 from GCC in this account or its other Morgan
19 Stanley account?

20 A. It would -- I'm sorry, could you
21 repeat your question?

22 Q. Sure. Did Ascot Partners receive
23 funds from GCC in this Morgan Stanley account or
24 its other primary Morgan Stanley account?

25 MR. STEINER: Objection to form.

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1 been told that they weren't entitled to the
2 redemption. I don't recall specific examples of
3 that, but that could have happened.

4 Q. How did the funds determine -- let
5 me rephrase the question.

6 When a redemption request came into
7 Ascot Partners, how did Ascot Partners determine
8 whether it had the cash necessary to satisfy that
9 request?

10 A. The accounting records would have
11 reflected the level of cash at any given time. So
12 we would know from the accounting records what
13 cash was available.

14 Q. And did Ascot Partners pay
15 redemption requests with available cash on hand?

16 MR. STEINER: Objection to form.

17 A. Yes.

18 Q. Do you know -- was there a time in
19 which Ascot Partners made a redemption request
20 from BLMIS to meet its own investor redemption
21 demands?

22 MR. STEINER: Objection to form.

23 MR. ANELLO: I didn't understand
24 the question.

25 MR. SONG: Let me break it up.

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1 Q. Between 1993 and 2008 did Ascot
2 Partners make redemption requests from BLMIS?

3 MR. STEINER: Objection to form.

4 A. It requested funds be taken from
5 the account, yes.

6 Q. And was there a time in which Ascot
7 Partners made the request for funds from BLMIS in
8 order to meet Ascot Partners' investor redemption
9 requests?

10 A. I think so.

11 Q. And who made the determination to
12 request funds from BLMIS to meet Ascot Partners
13 investor demands?

14 MR. STEINER: Objection to form, I
15 think you're again outside of the 30(b) (6) topics.
16 If you want Mr. Autera to try to answer to his
17 knowledge, that's how you want to spend your time,
18 you can go ahead.

19 A. Again, I don't recall specific
20 examples where that happened, but we would have
21 seen where available cash was and ultimately it
22 would be Ezra Merkin's decision where to generate
23 cash from.

24 Q. Did Ascot Partners ever borrow
25 money from Gabriel and Ariel to meet redemption

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1 transactions and then how were those recorded.

2 MR. STEINER: How were
3 communications recorded?

4 MR. SONG: Yes.

5 MR. STEINER: That's not part of
6 your -- that's not part of the deposition notice.

7 MR. SONG: Regarding the
8 investments, it is.

9 MR. ANELLO: Let me just
10 understand, because I'm going to take the position
11 that if he's not -- if he's going to be directed
12 by counsel for the entity not to respond as a
13 30(b) (6), that he's not here in his personal
14 capacity.

15 So, if you two don't come to an
16 agreement that it's within the scope of 30(b) (6),
17 I'm going to direct him not to answer the
18 question. So I don't know how you feel on this
19 particular question.

20 MR. STEINER: I just think this is
21 a ridiculous waste of time because it's not within
22 the 30(b) (6). If it's how you want to spend the
23 limited amount of time you have, I object that
24 it's outside the 30(b) (6), and reserve whatever
25 rights we have as to whether it's inside or

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1 outside.

2 If the witness wants to answer
3 sitting here, that's fine, but I just think that
4 you're way beyond this and if we're going to have
5 hours and hours of this, then we're going to move
6 to terminate this and not bring him back for
7 another day because you're not asking him
8 questions that are covered by the notice.

9 MR. SONG: I disagree with your
10 position.

11 MR. STEINER: It's your time, you
12 know.

13 Would you like the question read
14 back?

15 MR. ANELLO: I sure hope he doesn't
16 remember it.

17 THE WITNESS: Please.

18 (The following question was read:
19 "Did GCC communicate with BLMIS regarding
20 financial transactions?")

21 A. We would communicate with personnel
22 at Madoff Securities when we were going to put
23 money in the accounts or take money out of the
24 accounts.

25 Q. And when you were going to make a

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1 one of the accounts we used for this type of
2 transaction.

3 Q. Why was Ariel increasing its
4 capital allocation 38 million?

5 A. I don't know.

6 Q. Why was Gabriel increasing its
7 capital allocation by 59 million?

8 MR. STEINER: Again, I object.
9 That's beyond the scope of the 30(b) (6).

10 A. I'm not sure.

11 Q. And why was the 38 and 59 million
12 dollars respectively sent from Ascot Partners'
13 account?

14 MR. STEINER: Same objection.

15 A. I'm not sure.

16 Q. Who directed the transfers between
17 the defendant funds' BLMIS accounts?

18 MR. STEINER: Objection to form.

19 A. I did.

20 Q. But you don't know why that
21 direction was made?

22 A. For this particular transaction, I
23 don't recall.

24 Q. As a result of Ascot sending \$38
25 million to Ariel -- \$38 million from its BLMIS

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1 account to Ariel's BLMIS account, did Ascot
2 Partners receive \$38 million in return from Ariel?

3 A. It should have, yes.

4 Q. And would that have come from
5 Ariel's Morgan Stanley account going to Ascot's
6 Morgan Stanley account?

7 A. I think so.

8 Q. And how is that booked in the
9 respective QuickBooks?

10 A. As a transfer of cash from -- a
11 transfer out for the one account and a transfer in
12 for the other account. It would appear in both
13 Ascot and Ariel's books.

14 Q. Turn to Ascot's QuickBooks file.

15 MR. ANELLO: Which exhibit number
16 was that, Paul; do you know?

17 Brian. What did I call you; Paul?

18 MR. SONG: Yeah.

19 MR. ANELLO: Oh, I'm sorry.

20 MR. SONG: That's all right. Close
21 enough.

22 MR. ANELLO: I don't know where
23 Paul came from.

24 BY MR. SONG:

25 Q. Bates number is 222. It's Exhibit

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1 identification.)

2 Q. Mr. Autera, we've handed you what's
3 been marked as Trustee's 285. It is Bates
4 numbered AMF00076288. I will represent to counsel
5 that this is a document within a larger Bates
6 range from BLMIS's AMF files. The Bates range is
7 AMF00076286 through 6314.

8 MR. STEINER: What are the AMF
9 files?

10 MR. SONG: Those are the BLMIS
11 customer files.

12 MR. STEINER: And AMF is?

13 MS. FELDSTEIN: Account management
14 file.

15 MR. SONG: That's the base prefix.

16 Q. Mr. Autera, do you recognize
17 Exhibit 285?

18 A. It appears to be a fax that I sent
19 to Frank DiPascali.

20 MR. STEINER: I take it you're
21 asking about the text without the handwriting?

22 MR. SONG: Well, I do want --

23 Q. Do you recognize the handwriting on
24 this page?

25 A. I do not.

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1 A. Yes.

2 Q. And it appears that Ascot
3 Partners -- the money for Ariel and Gabriel is
4 coming from a withdrawal from Ascot Partners?

5 A. Ascot Partners is withdrawing \$45
6 million. Those capital changes are being
7 accomplished through transfers between the Madoff
8 accounts.

9 Q. So Ascot Partners is sending 18.5
10 million from its account to Ariel's account and
11 26.5 million from its account to Gabriel's
12 account?

13 A. Yes.

14 Q. Going back to Ascot Partners'
15 QuickBooks page, on page 309 you see at the top of
16 the page there is a 45 million dollar entry with
17 memo "withdrawal from Madoff"?

18 A. Yes.

19 Q. Can you tell me what that is?

20 A. That's the money coming out of,
21 coming out of Ascot's Madoff account.

22 Q. And then the next entry is
23 "withdrawal from Madoff (GC)." Do you see that?

24 A. Yes.

25 Q. That's the 26.5 million?

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1 A. Yes.

2 Q. And can you tell me why that's
3 entered in Ascot Partners' QuickBooks?

4 A. That's the other side of the --
5 that's the other side of the \$45 million coming
6 out. That's 26.5 million coming into Ascot
7 Partners' Morgan Stanley account.

8 Q. And that's indicated by the fact
9 that it's under the deposit at brokers account?

10 A. Yes.

11 Q. And the next line, "withdrawal from
12 Madoff AF"? See that?

13 A. Yes.

14 Q. Is that the withdrawal -- is that
15 the transfer of 18.5 million to Ariel's account?

16 A. Ascot's account is getting \$18.5
17 million at Morgan Stanley.

18 Q. As a result of Ascot's transfer of
19 18.5 million from its BLMIS account to Ariel's
20 account?

21 MR. STEINER: Objection to form.

22 A. It's the other side of that.

23 (Exhibit Trustee 286 marked for
24 identification.)

25 Q. Mr. Autera, I've handed you what's

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1 been marked as Trustee's Exhibit 286. It has
2 Bates number MSMERKIN 04869, all the way through
3 to 4968.

4 Take your time and look through it.
5 I'll tell you it is Ascot Partners' account █
6 █ monthly statements between January 01, 2007
7 through December 31, 2007.

8 A. Okay.

9 Q. Can you turn to page 4872.

10 A. Okay.

11 Q. This is the -- part of the January,
12 2007 monthly statement, and I apologize for the
13 smallness of the type, but do you see the credit
14 amount of 18.5 on January 4th?

15 A. I do.

16 Q. And that's a result -- in the memo
17 field -- sorry, description field, it says,
18 "January 1, 2007, Madoff reallocate."

19 Do you see that?

20 A. Yes.

21 Q. Again, do you know how Morgan
22 Stanley got the description for this transaction?

23 MR. STEINER: Objection to form.

24 A. I don't know exactly, but we would
25 have instructed Morgan Stanley to wire the funds

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1 from Ariel and Gabriel to Ascot. We may have on
2 those wire requests had some sort of notification.

3 Q. Is there a description field in the
4 wire requests to Morgan Stanley?

5 A. No.

6 Q. And this 18.5 million is deposited
7 into Ascot Partners from Ariel, correct?

8 A. Based on Exhibit 285, yes.

9 Q. And on Ascot Partners' QuickBooks?
10 Based on 285 and from what you saw in Ascot
11 Partners' QuickBooks?

12 A. Because the memo said AF, yes.

13 Q. And the 26.5 million that's
14 underneath it also has a January 1, 2007 Madoff
15 reallocates. Do you see that?

16 A. Yes.

17 Q. And that's the 26.5 million that
18 Ascot Partners received from Gabriel Capital?

19 A. Yes.

20 Q. If you could turn quickly to
21 Ariel's QuickBooks, and turn to page 125.

22 A. I'm sorry, what page?

23 Q. 125.

24 A. Okay.

25 Q. If you go all the way to the bottom

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1 of that page, there are two memo fields with
2 "additional capital Madoff." Do you see that?

3 A. Yes.

4 Q. Is this the 18.5 million that Ariel
5 sent to Ascot Partners?

6 A. I believe it is. It's the increase
7 of 18.5 million in their Madoff account and the
8 decrease in their Morgan account.

9 Q. And again, looking at Ariel's
10 QuickBooks, would you be able to tell that Ariel
11 sent 18.5 million directly to BLMIS?

12 A. Just looking at this journal
13 entry --

14 MR. STEINER: Objection to form.

15 A. Just looking at the journal entry,
16 no.

17 MR. STEINER: Especially because
18 that's not what happened.

19 Q. Well, could you tell looking
20 from -- at this entry, whether Ariel sent 18.5
21 million to Ascot's Morgan Stanley account?

22 A. Not looking just at this journal
23 entry, no.

24 Q. If you can go to Gabriel's
25 QuickBooks. Go to page 448. About the middle of

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1 that page there's a -- two January 4, 2007
2 transactions. One transaction but two entries,
3 additional capital in Madoff. You see that's 26.5
4 million?

5 A. Yes.

6 Q. So, is that the -- is that
7 Gabriel's record of the 26.5 million dollar
8 transfer to Ascot Partners?

9 A. It's the entry of Gabriel Capital's
10 increase of 26.5 million in its Madoff account and
11 a decrease in its Morgan Stanley account of a like
12 amount.

13 Q. And from looking at the journal
14 entries, are you able to determine whether or not
15 Gabriel sent the \$26.5 million to Ascot Partners
16 or if they sent it to BLMIS?

17 A. Looking at this journal entry, I
18 can't tell.

19 Q. If you can flip back to Ascot
20 Partners' QuickBooks. Sorry for all the flipping.

21 If you would go to page 309. At
22 the top of the page underneath the transactions
23 that we've already talked about, do you see on
24 January 4th of '07 in the memo field it's "1/1
25 Dist - Ascot Fund" and the amount is \$12,750,000?

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1 it's likely that this was just one journal entry
2 that -- and the first part of that journal entry
3 was deposit at Madoff, which is up at the top.
4 It's the \$45 million. It likely -- the system
5 probably fills the split account.

6 Q. Okay.

7 With investor contributions, were
8 you given any advance notice of possible investor
9 contributions prior to their entry into the
10 QuickBooks?

11 A. Yes.

12 Q. And did you create an informal list
13 for investor contributions as well?

14 A. It's the same informal list. It
15 would include redemptions and subscriptions.
16 Potential redemptions and subscriptions.

17 Q. So you did the same process with
18 subscriptions that you did with redemptions?

19 A. Yes. The same process as far as
20 posting to my informal list.

21 MR. SONG: See if I can get through
22 one more document.

23 (Exhibit Trustee 287 marked for
24 identification.)

25 Q. Mr. Autera, we've handed you what's

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1 been marked as Trustee's Exhibit 287. It's Bates
2 number is MDPTPP00020630, ending at 635. Do you
3 recognize this document?

4 A. Again, I don't recognize the
5 document, but it appears to reflect the activity
6 in Ascot Partners' Madoff account for January
7 2007.

8 Q. And do you see the balance forward
9 in January of 2007 is 20 cents?

10 A. Yes.

11 Q. And the available cash at the
12 beginning of the year is 20 cents in Ascot
13 Partners' account?

14 A. That's the cash balance for this
15 account, according to this document.

16 Q. And then you see the account
17 received certain dividends on January 2nd and
18 January 3rd?

19 A. That's what this states, yes.

20 Q. And it's -- and those dividends add
21 up to about \$561,000 in cash on January 3rd?

22 A. Okay.

23 Q. You see on January 4th there's a
24 transfer to 1-FR0703 of 18.5 million?

25 A. Yup.

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1 Q. That's the transfer out of Ascot's
2 BLMIS account to Ariel's BLMIS account?

3 A. From -- that's money coming in from
4 Ariel's account into Ascot's account. Going out,
5 I'm sorry. The other way around.

6 Q. Yes.

7 A. Yup.

8 Q. And we saw that transaction in the
9 books and records already.

10 A. Yes.

11 Q. And then underneath that there's a
12 26.5 million dollar transfer to Gabriel's 1-G03213
13 account. Do you see that?

14 A. Yes.

15 Q. So Ascot Partners was able to
16 transfer out \$45 million on January 4th, but did
17 not have \$45 million in available cash on that
18 date. Do you see that?

19 MR. STEINER: Objection to form.

20 A. That's what this document shows.

21 Q. And the account shows that it
22 didn't have available cash, the available cash to
23 make that 45 million dollar transfer until January
24 9th when it received a little over 114 million in
25 proceeds from a treasury sale. Do you see that?

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1 is the account, because it's not his document.

2 But if you're saying the way you add up the
3 numbers on this document, I understand the
4 question.

5 BY MR. SONG:

6 Q. From the cash transactions that you
7 see on this document, if Ascot Partners was in a
8 negative cash position from January 4th to January
9 9th and BLMIS charged margin interest, would that
10 be recorded in Ascot Partners' books and records?

11 MR. STEINER: Objection to form.

12 A. If BLMIS charged Ascot Partners
13 margin interest, we would have reflected it in our
14 reports, our records.

15 MR. SONG: I think this is a good
16 break point, knowing counsel has a 5 o'clock hard
17 stop time.

18 THE VIDEOGRAPHER: Off the record,
19 4:30.

20 (Deposition adjourned.)

21 -o0o-

22

23

24

25